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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO. |
|--|-------------|----------------------|-------------------------|------------------|
| 10/510,037   | 03/17/2005  | Erich Fuderer        | 566/42763               | 4656             |
| 23646  | 7590        | 08/28/2006           | EXAMINER                |                  |
| BARNES & THORNBURG LLP<br>750-17TH STREET NW<br>SUITE 900<br>WASHINGTON, DC 20006-4675 |             |                      | SCHWARTZ, CHRISTOPHER P |                  |
|  |             |                      | ART UNIT                | PAPER NUMBER     |
|  |             |                      | 3683                    |                  |

DATE MAILED: 08/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |  |                                       |  |
|------------------------------|--|---------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/510,037       | <b>Applicant(s)</b><br>FUDERER ET AL. |  |
|                              | <b>Examiner</b><br>Christopher P. Schwartz | <b>Art Unit</b><br>3683               |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

*Christopher P. Schwartz*  
CHRISTOPHER P. SCHWARTZ  
PRIMARY EXAMINER

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 2-20 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Line 1 of new independent claim 20 contains a range within a range  
..."particularly for rail vehicles".

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 2,3,18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfsteiner et al. (the PCT publication is relied upon with a date of 3/29/2001) in view of Wickham et al. '852 or Blosch et al.

Regarding claim 20 Wolfsteiner et al. shows a brake device with which applicants are familiar. Note the motors at 24 and 26 and the nut/spindle unit at 58.

Lacking in Wolfsteiner et al. is the helical connection parts, although as broadly claimed Wolfsteiner et al. may be interpreted to include all of these features. See the discussion in Wolfsteiner et al. column 4 lines 46-66.

Wickham et al. Or Blosch et al. clearly show "second connection parts". See the second motor 26 of Wickham et al. column 4 lines 7-12 and 18-22. See Blosch et al. the abstract and the readjusting motor at 50.

One having ordinary skill in the art at the time of the invention would have found it obvious to have provided Wolfsteiner et al. with a "second connection part" as broadly claimed simply as a backup to the first one or for the reasons discussed by Wickham and Blosch.

Regarding claims 2,3 these types of gear arrangements are notoriously well known in the art. See the art cited by the examiner. Consequently it would have been obvious to have substituted one well known type of gear/spindle/nut and clutching arrangement for another simply dependent upon such well known obvious engineering design considerations as weight, space, and energy considerations and effectiveness of braking action according to application specifics.

6. Claims 4-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfsteiner et al. in view of Wickham et al. '852 or Blosch et al. as applied to claim 20 above, and further in view of either Takahashi et al. or Nadas et al.

Regarding claims 4-17 Takahashi et al. (see figure clutch arrangement at 136) and Nadas et al. arrangement at 24 clearly teach known alternative gear and clutch arrangements for linear type brake actuators. Either of these could be substituted for the nut and spindle arrangement of Wolfsteiner et al. simply as an obvious alternative equivalent arrangement of known mechanical parts.

7. Claim 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfsteiner in view of either Wickham et al. '852 or Blosch et al. as applied to claim 18 above, and further in view of EP 0699846 or Akamatsu et al.

The reference to EP '846 (as discussed in applicants specification) is relied upon simply to show a known nut and spindle arrangement similar to that of Wolfsteiner et al. This wear adjusting arrangement could be used in Wolfsteiner et al.

Akamatsu et al. Also shows a free wheel spring clutch arrangement at 16 or 30,31. Note the two motors at 11 and 19 (which controls the function of the spring). Such a motor/gear/wear adjuster arrangement could be substituted for the same arrangement in a device as Wolfsteiner et al.

### ***Conclusion***

8. It is recommended applicant's reconsider the undue breadth of their claims before preparing a response to the action above.

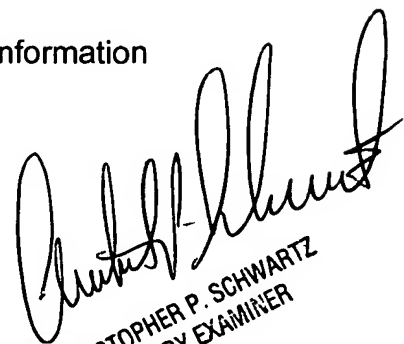
9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references cited have been relied upon in part to establish the conclusions of obviousness reached above. They should be thoroughly reviewed before preparing a response to this action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Schwartz whose telephone number is 571-272-7123. The examiner can normally be reached on M-F 10:30-7:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jim McClellan can be reached on 571-272-6786. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Cps  
8/22/06



CHRISTOPHER P. SCHWARTZ  
PRIMARY EXAMINER